1	Introduced by Committee on Health and Welfare			
2	Date:			
3	Subject: Health; COVID-19; health care providers; regulatory flexibility;			
4	advance directives; immunization registry			
5	Statement of purpose of bill as introduced: This bill proposes to extend until			
6	March 31, 2022 certain provisions of 2020 Acts and Resolves Nos. 91 and 140			
7	allowing for health care-related regulatory flexibility during and immediately			
8	following the COVID-19 pandemic. It would authorize the Department of			
9	Financial Regulation to adopt rules expanding patients' access to and			
10	providers' reimbursement for health care services delivered by telephone until			
11	January 1, 2024. The bill would also allow remote witnesses for advance			
12	directives through June 30, 2022 and permit the Department of Health to			
13	provide immunization registry information to the Vermont Health Information			
14	Exchange.			
15 16	An act relating to extending health care regulatory flexibility during and after the COVID-19 pandemic			
17	It is hereby enacted by the General Assembly of the State of Vermont:			
18	Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and			
19	Resolves No. 140, Sec. 13, is further amended to read:			
20	* * * Supporting Health Care and Human Service Provider Sustainability * * *			

1	Sec. 1. AGENCY OF HUMAN SERVICES; HEALTH CARE AND
2	HUMAN SERVICE PROVIDER SUSTAINABILITY
3	Through March 31, 2021 2022, the Agency of Human Services shall
4	consider modifying existing rules or adopting emergency rules to protect
5	access to health care services, long-term services and supports, and other
6	human services under the Agency's jurisdiction. In modifying or adopting
7	rules, the Agency shall consider the importance of the financial viability of
8	providers that rely on funding from the State, federal government, or Medicaid,
9	or a combination of these, for a major portion of their revenue.
10	* * *
11	* * * Protections for Employees of Health Care Facilities and
12	Human Service Providers * * *
13	Sec. 3. PROTECTIONS FOR EMPLOYEES OF HEALTH CARE
14	FACILITIES AND HUMAN SERVICE PROVIDERS
15	In order to protect employees of a health care facility or human service
16	provider who are not licensed health care professionals from the risks
17	associated with COVID-19, through March 31, 2021 2022, all health care
18	facilities and human service providers in Vermont, including hospitals,
19	federally qualified health centers, rural health clinics, residential treatment
20	programs, homeless shelters, home- and community-based service providers,
21	and long-term care facilities, shall follow guidance from the Vermont

1	Department of Health regarding measures to address employee safety, to the
2	extent feasible.
3	* * * Compliance Flexibility * * *
4	Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER
5	REGULATION; WAIVER OR VARIANCE PERMITTED
6	Notwithstanding any provision of the Agency of Human Services'
7	administrative rules or standards to the contrary, through March 31, 2021
8	2022, the Secretary of Human Services may waive or permit variances from
9	the following State rules and standards governing providers of health care
10	services and human services as necessary to prioritize and maximize direct
11	patient care, support children and families who receive benefits and services
12	through the Department for Children and Families, and allow for continuation
13	of operations with a reduced workforce and with flexible staffing arrangements
14	that are responsive to evolving needs, to the extent such waivers or variances
15	are permitted under federal law:
16	(1) Hospital Licensing Rule;
17	(2) Hospital Reporting Rule;
18	(3) Nursing Home Licensing and Operating Rule;
19	(4) Home Health Agency Designation and Operation Regulations;
20	(5) Residential Care Home Licensing Regulations;
21	(6) Assisted Living Residence Licensing Regulations;

1	(7) Home for the Terminally Ill Licensing Regulations;
2	(8) Standards for Adult Day Services;
3	(9) Therapeutic Community Residences Licensing Regulations;
4	(10) Choices for Care High/Highest Manual;
5	(11) Designated and Specialized Service Agency designation and
6	provider rules;
7	(12) Child Care Licensing Regulations;
8	(13) Public Assistance Program Regulations;
9	(14) Foster Care and Residential Program Regulations; and
10	(15) other rules and standards for which the Agency of Human Services
11	is the adopting authority under 3 V.S.A. chapter 25.
12	* * *
13	Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER
14	ENROLLMENT AND CREDENTIALING
15	(a) Until the last to terminate of a declared state of emergency in Vermont
16	as a result of COVID-19, a declared federal public health emergency as a result
17	of COVID-19, and a declared national emergency as a result of COVID-19
18	March 31, 2022, and to the extent permitted under federal law, the Department
19	of Vermont Health Access shall relax provider enrollment requirements for the
20	Medicaid program, and the Department of Financial Regulation shall direct
21	health insurers to relax provider credentialing requirements for health

1	insurance plans, in order to allow for individual health care providers to deliver
2	and be reimbursed for services provided across health care settings as needed
3	to respond to Vermonters' evolving health care needs.
4	(b) In the event that another state of emergency is declared in Vermont as a
5	result of COVID-19 after the termination of the State and federal emergencies,
6	the Departments shall again cause the provider enrollment and credentialing
7	requirements to be relaxed as set forth in subsection (a) of this section.
8	* * *
9	* * * Access to Health Care Services and Human Services * * *
10	* * *
11	Sec. 9. PRESCRIPTION DRUGS; MAINTENANCE MEDICATIONS;
12	EARLY REFILLS
13	(a) As used in this section, "health insurance plan" means any health
14	insurance policy or health benefit plan offered by a health insurer, as defined in
15	18 V.S.A. § 9402. The term does not include policies or plans providing
16	coverage for a specified disease or other limited benefit coverage.
17	(b) Through June 30, 2021 March 31, 2022, all health insurance plans and
18	Vermont Medicaid shall allow their members to refill prescriptions for chronic
19	maintenance medications early to enable the members to maintain a 30-day
20	supply of each prescribed maintenance medication at home.

1	(c) As used in this section, "maintenance medication" means a prescription
2	drug taken on a regular basis over an extended period of time to treat a chronic
3	or long-term condition. The term does not include a regulated drug, as defined
4	in 18 V.S.A. § 4201.
5	* * *
6	Sec. 12. BUPRENORPHINE; PRESCRIPTION RENEWALS
7	Through March 31, 2021 2022, to the extent permitted under federal law, a
8	health care professional authorized to prescribe buprenorphine for treatment of
9	substance use disorder may authorize renewal of a patient's existing
10	buprenorphine prescription without requiring an office visit.
11	Sec. 13. 24-HOUR FACILITIES AND PROGRAMS; BED-HOLD DAYS
12	Through March 31, 2021 <u>2022</u> , to the extent permitted under federal law,
13	the Agency of Human Services may reimburse Medicaid-funded long-term
14	care facilities and other programs providing 24-hour per day services for their
15	bed-hold days.
16	* * * Regulation of Professions * * *
17	* * *
18	Sec. 17. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
19	MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE
20	PROFESSIONALS

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1	(a) Notwithstanding any provision of Vermont's professional licensure
2	statutes or rules to the contrary, through March 31, 2021 2022, a health care
3	professional, including a mental health professional, who holds a valid license,
4	certificate, or registration to provide health care services in any other U.S.
5	jurisdiction shall be deemed to be licensed, certified, or registered to provide
6	health care services, including mental health services, to a patient located in
7	Vermont using telehealth, as a volunteer member of the Medical Reserve
8	Corps, or as part of the staff of a licensed facility or federally qualified health
9	center, provided the health care professional:
10	(1) is licensed, certified, or registered in good standing in the other U.S.
11	jurisdiction or jurisdictions in which the health care professional holds a
12	license, certificate, or registration;
13	(2) is not subject to any professional disciplinary proceedings in any
14	other U.S. jurisdiction; and
15	(3) is not affirmatively barred from practice in Vermont for reasons of
16	fraud or abuse, patient care, or public safety.
17	(b) A health care professional who plans to provide health care services in
18	Vermont as a volunteer member of the Medical Reserve Corps or as part of the

staff of a licensed facility or federally qualified health center shall submit or

have submitted on the individual's behalf the individual's name, contact

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Page	8	of	19

1	information, and the location or locations at which the individual will be
2	practicing to:
3	(1) the Board of Medical Practice for medical doctors, physician
4	assistants, and podiatrists; or
5	(2) the Office of Professional Regulation for all other health care
6	professions.
7	(c) A health care professional who delivers health care services in Vermont
8	pursuant to subsection (a) of this section shall be subject to the imputed
9	jurisdiction of the Board of Medical Practice or the Office of Professional
10	Regulation, as applicable based on the health care professional's profession, in
11	accordance with Sec. 19 of this act.
12	(d)(1) This section shall remain in effect through March 31, 2021 2022,
13	provided the health care professional remains licensed, certified, or registered
14	in good standing.
15	(2) The Board of Medical Practice and Office of Professional
16	Regulation shall provide appropriate notice of the March 31, 2022 expiration
17	date of this section to:
18	(A) health care professionals providing health care services in
19	Vermont under this section;
20	(B) the Medical Reserve Corps; and

1	(C) health care facilities and federally qualified health centers at
2	which health care professionals are providing services under this section.
3	Sec. 18. RETIRED HEALTH CARE PROFESSIONALS INACTIVE
4	LICENSEES; BOARD OF MEDICAL PRACTICE; OFFICE OF
5	PROFESSIONAL REGULATION
6	(a)(1) Through March 31, 2021 2022, a former health care professional,
7	including a mental health professional, who retired whose Vermont license,
8	certificate, or registration became inactive not more than three years earlier
9	with the individual's Vermont license, certificate, or registration and was in
10	good standing at the time it became inactive may provide health care services,
11	including mental health services, to a patient located in Vermont using
12	telehealth, as a volunteer member of the Medical Reserve Corps, or as part of
13	the staff of a licensed facility or federally qualified health center after
14	submitting, or having submitted on the individual's behalf, to the Board of
15	Medical Practice or Office of Professional Regulation, as applicable, the
16	individual's name, contact information, and the location or locations at which
17	the individual will be practicing.
18	(2) A former health care professional who returns to the Vermont health
19	care workforce pursuant to this subsection shall be subject to the regulatory
20	jurisdiction of the Board of Medical Practice or the Office of Professional
21	Regulation, as applicable.

1	(3) The Board of Medical Practice and Office of Professional
2	Regulation shall provide appropriate notice of the March 31, 2022 expiration
3	date of this section to:
4	(A) health care professionals providing health care services under
5	this section;
6	(B) the Medical Reserve Corps; and
7	(C) health care facilities and federally qualified health centers at
8	which health care professionals are providing services under this section.
9	(b) Through March 31, 2021 2022, the Board of Medical Practice and
10	the Office of Professional Regulation may permit former health care
11	professionals, including mental health professionals, who retired whose
12	Vermont license, certificate, or registration became inactive more than three
13	but less than 10 years earlier with their Vermont license, certificate, or
14	registration and was in good standing at the time it became inactive to return to
15	the health care workforce on a temporary basis to provide health care services,
16	including mental health services, to patients in Vermont. The Board of
17	Medical Practice and Office of Professional Regulation may issue temporary
18	licenses to these individuals at no charge and may impose limitations on the
19	scope of practice of returning health care professionals as the Board or Office
20	deems appropriate.
21	* * *

1	Sec. 20. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
2	MEDICAL PRACTICE; EMERGENCY AUTHORITY TO ACT
3	FOR REGULATORY BOARDS
4	(a)(1) Through March 31, 2021 2022, if the Director of Professional
5	Regulation finds that a regulatory body attached to the Office of Professional
6	Regulation by 3 V.S.A. § 122 cannot reasonably, safely, and expeditiously
7	convene a quorum to transact business, the Director may exercise the full
8	powers and authorities of that regulatory body, including disciplinary
9	authority.
10	(2) Through March 31, 2021 2022, if the Executive Director of the
11	Board of Medical Practice finds that the Board cannot reasonably, safely, and
12	expeditiously convene a quorum to transact business, the Executive Director
13	may exercise the full powers and authorities of the Board, including
14	disciplinary authority.
15	(b) The signature of the Director of the Office of Professional Regulation
16	or of the Executive Director of the Board of Medical Practice shall have the
17	same force and effect as a voted act of their respective boards.
18	(c)(1) A record of the actions of the Director of the Office of Professional
19	Regulation taken pursuant to the authority granted by this section shall be
20	published conspicuously on the website of the regulatory body on whose
21	behalf the Director took the action.

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1	(2) A record of the actions of the Executive Director of the Board of
2	Medical Practice taken pursuant to the authority granted by this section shall
3	be published conspicuously on the website of the Board of Medical Practice.
4	Sec. 21. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
5	MEDICAL PRACTICE; EMERGENCY REGULATORY
6	ORDERS
7	Through March 31, 2021 2022, the Director of Professional Regulation and
8	the Commissioner of Health may issue such orders governing regulated
9	professional activities and practices as may be necessary to protect the public
10	health, safety, and welfare. If the Director or Commissioner finds that a
11	professional practice, act, offering, therapy, or procedure by persons licensed
12	or required to be licensed by Title 26 of the Vermont Statutes Annotated is
13	exploitative, deceptive, or detrimental to the public health, safety, or welfare,
14	or a combination of these, the Director or Commissioner may issue an order to
15	cease and desist from the applicable activity, which, after reasonable efforts to
16	publicize or serve the order on the affected persons, shall be binding upon all
17	persons licensed or required to be licensed by Title 26 of the Vermont Statutes
18	Annotated, and a violation of the order shall subject the person or persons to
19	professional discipline, may be a basis for injunction by the Superior Court,
20	and shall be deemed a violation of 3 V.S.A. § 127.

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1	* * * Telehealth * * *
2	* * *
3	Sec. 26. WAIVER OF CERTAIN TELEHEALTH REQUIREMENTS
4	FOR A LIMITED TIME
5	Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A. § 9361 to
6	the contrary, through March 31, 2021 2022, the following provisions related to
7	the delivery of health care services through telemedicine or by store-and-
8	forward means shall not be required, to the extent their waiver is permitted by
9	federal law:
10	(1) delivering health care services, including dental services, using a
11	connection that complies with the requirements of the Health Insurance
12	Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance
13	with 8 V.S.A. § 4100k(i), as amended by this act, if it is not practicable to use
14	such a connection under the circumstances;
15	(2) representing to a patient that the health care services, including
16	dental services, will be delivered using a connection that complies with the
17	requirements of the Health Insurance Portability and Accountability Act of
18	1996, Pub. L. No. 104-191 in accordance with 18 V.S.A. § 9361(c), if it is not
19	practicable to use such a connection under the circumstances; and
20	(3) (end 60 days after end of state of emergency? HHC) obtaining
21	and documenting a patient's oral or written informed consent for the use of

1	telemedicine or store-and-forward technology prior to delivering services to
2	the patient in accordance with 18 V.S.A. § 9361(c), if obtaining or
3	documenting such consent, or both, is not practicable under the circumstances.
4	* * *
5	Sec. 2. 2020 Acts and Resolves No. 140, Sec. 15 is amended to read:
6	Sec. 15. BOARD OF MEDICAL PRACTICE; TEMPORARY
7	PROVISIONS; PHYSICIANS, PHYSICIAN ASSISTANTS,
8	AND PODIATRISTS
9	(a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,
10	the Board of Medical Practice or its Executive Director may issue a temporary
11	license through March 31, 2021 2022 to an individual who is licensed to
12	practice as a physician, physician assistant, or podiatrist in another jurisdiction
13	whose license is in good standing, and who is not subject to disciplinary
14	proceedings in any other jurisdiction. The temporary license shall authorize
15	the holder to practice in Vermont until a date not later than April 1, 2021 2022
16	provided the licensee remains in good standing.
17	(b) Through March 31, 2021 2022, the Board of Medical Practice or its
18	Executive Director may waive supervision and scope of practice requirements
19	for physician assistants, including scope of practice requirements and the
20	requirement for documentation of the relationship between a physician
21	assistant and a physician pursuant to 26 V.S.A. § 1735a. The Board or

1	Executive Director may impose limitations or conditions when granting a
2	waiver under this subsection.
3	Sec. 3. 2020 Acts and Resolves No. 91, Sec. 8, as amended by 2020 Acts and
4	Resolves No. 140, Sec. 13 and 2020 Acts and Resolves No. 159, Sec. 10, is
5	further amended to read:
6	Sec. 8. ACCESS TO HEALTH CARE SERVICES; DEPARTMENT OF
7	FINANCIAL REGULATION; EMERGENCY RULEMAKING
8	(a) It is the intent of the General Assembly to increase Vermonters' access
9	to medically necessary health care services during and after a declared state of
10	emergency in Vermont as a result of COVID-19.
11	(b)(1) Until July 1, 2021 April 1, 2022, and notwithstanding any provision
12	of 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall
13	consider adopting, and shall have the authority to adopt, emergency rules to
14	address the following through June 30, 2021 March 30, 2022:
15	(1)(A) expanding health insurance coverage for, and waiving or limiting
16	cost-sharing requirements directly related to, the diagnosis of COVID-19,
17	including tests for influenza, pneumonia, and other respiratory viruses
18	performed in connection with making a COVID-19 diagnosis; the treatment of
19	COVID-19 when it is the primary or a secondary diagnosis; and the prevention
20	of COVID-19; and

1	(B) modifying or suspending health insurance plan deductible
2	requirements for all prescription drugs, except to the extent that such an action
3	would disqualify a high-deductible health plan from eligibility for a health
4	savings account pursuant to 26 U.S.C. § 223; and.
5	(2) Any rules adopted in accordance with this subsection shall remain in
6	effect until not later than April 1, 2022.
7	(3)(c) The Department of Financial Regulation shall consider adopting,
8	and shall have the authority to adopt, rules expanding patients' access to and
9	providers' reimbursement for health care services, including preventive
10	services, consultation services, and services to new patients, delivered
11	remotely through telehealth, audio-only telephone, and brief
12	telecommunication services. Any rules adopted in accordance with this
13	subsection shall remain in effect until not later than January 1, 2024.
14	Sec. 4. 18 V.S.A. § 9721 is amended to read:
15	§ 9721. ADVANCE DIRECTIVES; COVID-19 STATE OF EMERGENCY;
16	REMOTE WITNESSES AND EXPLAINERS
17	* * *
18	(c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
19	the contrary, an advance directive executed by a principal between June 15,
20	2020 and June 30, 2021 <u>2022</u> shall be deemed to be valid even if the principal
21	signed the advance directive outside the physical presence of one or both of the

required witnesses, provided all of the following conditions are met with respect to each remote witness:

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(d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this title to the contrary, an advance directive executed by a principal between February 15, 2020 and June 30, 2021 2022 while the principal was being admitted to or was a resident of a nursing home or residential care facility or was being admitted to or was a patient in a hospital shall be deemed to be valid even if the individual who explained the nature and effect of the advance directive to the principal in accordance with subsection 9703(d) or (e) of this title, as applicable, was not physically present in the same location as the principal at the time of the explanation, provided the individual delivering the explanation was communicating with the principal by video or telephone.

14 ***

15 Sec. 5. 18 V.S.A. § 1129 is amended to read:

§ 1129. IMMUNIZATION REGISTRY

(a) A health care provider shall report to the Department all data regarding immunizations of adults and of children under 18 years of age within seven days of the immunization, provided that required reporting of immunizations of adults shall commence within one month after the health care provider has established an electronic health records system and data interface pursuant to

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- the e-health standards developed by the Vermont Information Technology
 Leaders. A health insurer shall report to the Department all data regarding
 immunizations of adults and of children under 18 years of age at least
- quarterly. All data required pursuant to this subsection shall be reported in a format required by the Department.
 - (b) The Department may use the data to create a registry of immunizations. Registry information shall remain confidential and privileged, except as provided in subsections (c) and (d) of this section. Registry information regarding a particular adult shall be provided, upon request, to the adult, the adult's health care provider, and the adult's health insurer. Registry information regarding a particular minor child may be provided, upon request, to school nurses, or in the absence of a nurse on staff, administrators, and upon request and with written parental consent, to licensed day care providers, to document compliance with Vermont immunization laws. Registry information regarding a particular child shall be provided, upon request to the minor child's parent or guardian, health insurer, and health care provider, or to the child after the child reaches the age of majority.
 - (c) The Department may exchange confidential registry information with the immunization registries of other states in order to obtain comprehensive immunization records.

1	(d) The Department may provide confidential registry information to health
2	care provider networks serving Vermont patients, to the Vermont Health
3	Information Exchange, and, with the approval of the Commissioner, to
4	researchers who present evidence of approval from an institutional review
5	board in accordance with 45 C.F.R. § 164.512.
6	(e) Prior to releasing confidential information pursuant to subsections (c)
7	and (d) of this section, the Commissioner shall obtain from State registries,
8	health care provider networks, the Vermont Health Information Exchange, and
9	researchers a written agreement to keep any identifying information
10	confidential and privileged.
11	* * *
12	Sec. 6. EFFECTIVE DATE
13	This act shall take effect on passage.